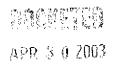
## **United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge			Edward A	. Bobrick	Sitting Judge if Other than Assigned Judge			
CASE NUMBER			02 C (	6188	DATE	4/25/2	2003	
CASE TITLE			Christop	Christopher G. Bowman, D.O. vs. Reliance Standard Life Insurance Co				
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DOCKET ENTRY:								
(1)	) Filed motion of [ use listing in "Motion" box above.]							
(2)		Brief in support of motion due						
(3)		Answer brief to motion due Reply to answer brief due						
(4)		Ruling/Hearing on set for at						
(5)		Status hearing[held/continued to] [set for/re-set for] on set for at						
(6)	_ I	Pretrial conference[held/continued to] [set for/re-set for] on set for at						
(7)		Trial[s	et for/re-set for] on _	at				
(8)		[Benc]	h/Jury trial] [Hearing]	held/continued to	at			
(9)		This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  ☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).						
[Other docket entry] Plaintiff's Motion for Reconsideration of Denial of Attorneys' Fees [21-1] is denied. Enter Memorandum Order.								
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(11) For further detail see order attached to the original minute order.]								
	No notices required, advised in open court.						Document Number	
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## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION



CHRISTOPHER G. BOWMAN, D.O., Plaintiff,	) ) )	
vs.	) No. 02 C 6188	
RELIANCE STANDARD LIFE INSURANCE COMPANY,	) Edward A. Bobrick,  Magistrate Judge	
Defendant.	j ,	

## MEMORANDUM ORDER

Before the court is the motion of plaintiff Christopher Bowman for reconsideration of this court's ruling of March 21, 2003.

On March 21, 2003, this court granted plaintiff's motion for summary judgment but denied his request for fees. Plaintiff now moves for an order altering that judgment and awarding fees under Fed.R.Civ.P. 59(e). Rule 59(e) requires that the moving party clearly establish a manifest error of law or an intervening change in the controlling law or present newly discovered evidence. *Romo v. Gulf Stream Coach, Inc.*, 250 F.3d 1119, 1121 (7th Cir. 2001). Here, plaintiff suggests that the court committed an manifest error of law by applying the wrong standard to his request for attorney's fees. The plaintiff, however, has not directed the court to a standard that is any different than the one the court applied in its previous ruling.

As this court has already noted, ERISA allows a court, in its discretion, to award "a reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132(g)(1); Fritcher, 301 F.3d at 818. While there may be a "modest presumption" in favor of an award of fees, there are, nevertheless, two tests for analyzing whether that "modest presumption is applicable to a particular case. One is a five factor test, in which the court considers: (1) the degree of the offending party's "culpability or bad faith"; (2) the degree of the offending party's ability to satisfy an award of attorney's fees; (3) the degree to which such an award would "deter other persons acting under similar circumstances"; (4) the amount of benefit conferred on all the plan members; and (5) the relative merits of the parties' positions. Fritcher, 301 F.3d at 819. The second test looks to whether a party's position was substantially justified. Quinn v. Blue cross and Blue Shield, 161 F.3d 472, 478 (7th Cir. 1998). The Seventh Circuit has suggested that both tests ask essentially the same question: "was the losing party's position substantially justified and taken in good faith, or was that party simply out to harass its opponent." Id. Once again, as we already have a month ago, we find that an award of fees is inappropriate under these standards.

As we already noted, there is nothing in the record that would lead the court to suspect the defendant was out to harass the plaintiff. This was a case of an insurance company interpreting the evidence from its perspective. The evidence in this case was not, as the plaintiff thinks, completely one-sided. There were some conflicting doctors' reports, which the insurance company had to resolve. Because the review of the defendant's decision was de novo, however, the court did not have to defer to those resolutions. Wallace v. Reliance

Standard Life Ins. Co., 318 F.3d 723, 724 (7th Cir. 2003). As a whole, the record shows that

the defendant considered plaintiff's claim in good faith and gave plaintiff and his counsel

every opportunity to support his claim. Indeed, if anything, the defendant went beyond its

obligations in that respect. It was plaintiff, or his counsel, who dropped the ball by failing

to provide additional medical evidence despite two deadline extensions, and by failing to

accomplish the simple task of providing a job description to accompany plaintiff's claim.

No, this is not a case where an award of attorney's fees is warranted.

**CONCLUSION** 

For the foregoing reasons, the plaintiff's motion to alter or amend judgment under

Rule 59(e) is DENIED.

U.S. MAGISTRATE JUDGE

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**DATE:** April 25, 2003

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